

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

THICCC BOY PRODUCTIONS INC.

Plaintiff,

v.

KYLE SWINDELLES a/k/a YEW NEEK
NESS; and DOES 1 through 10,

Defendants.

Case No. 1:22-cv-00090-MSM-PAS

**PLAINTIFF THICCC BOY
PRODUCTIONS INC.’S RESPONSE TO
DEFENDANT KYLE SWINDELLES’
STATEMENT OF UNDISPUTED FACTS**

Pursuant to Local Rule 56(a)(3), Plaintiff Thiccc Boy Productions Inc. (“Plaintiff”) hereby submits the following response to Defendant Kyle Swindelles’ (“Defendant”) Statement of Undisputed Facts (“Statement”).

RESPONSE TO DEFENDANT’S STATEMENT

1. Plaintiff Thiccc Boy Productions, Inc. is a Colorado corporation. Complaint at Paragraph 1.

Response: Undisputed.

2. Defendant Kyle Swindelles is a YouTube content creator residing in Providence, Rhode Island. Complaint at ¶ 2.

Response: Undisputed.

3. Plaintiff owns copyrighted audiovisual works for the podcast The Fighter and the Kid (“TFATK”), including the individual episodes:

a. TFATK Episode 725 (Sept. 7, 2021);

- b. TFATK Episode 726 (Sept. 8, 2021);
- c. TFATK Episode 729 (Sept. 20, 2021); and
- d. TFATK Episode 740 (Oct. 25, 2021). Complaint at ¶ 7.

Response: Undisputed.

4. YouTube is an online video streaming service. Videos on the site can be viewed and listened to by viewers. Complaint at ¶ 9.

Response: Undisputed.

5. On February 15, 2022, and February 16, 2022, Plaintiff sent YouTube Digital Millennium Copyright Act (“DMCA”) takedown notices regarding Defendant’s audiovisual content. Complaint at ¶ 13.

Response: Undisputed that on February 15, 2022 and February 16, 2022, Plaintiff sent YouTube four DMCA takedown notices for the Infringing Works. Disputed that the Infringing Works can be termed “Defendant’s audiovisual works,” implying that Defendant owns the works. Defendant, without authorization, created the Infringing Works and uploaded them to YouTube. The Infringing Works contain significant portions of Plaintiff’s copyrighted Works that Defendant copied. ECF No. 47, Exs. E, F, G, H.

6. On February 18, 2022, and February 19, 2022, Defendant sent YouTube DMCA counternotifications to dispute Plaintiff’s takedown notices. Complaint at ¶ 14.

Response: Undisputed.

7. On February 22, 2022, Plaintiff registered the above-named episodes of TFATK with the United States Copyright Office. Complaint at ¶ 8.

Response: Undisputed.

8. On February 28, 2022, Plaintiff filed suit for copyright infringement in this Court. Complaint.

Response: Undisputed.

9. TFATK Episode 725 is an audiovisual work uploaded to YouTube on September 7, 2021. Exhibit A; https://youtu.be/tmxp_I7XmlA.

Response: Undisputed.

10. TFATK Episode 725 has an approximate total runtime of one (1) hour, twenty-five (25) minutes, six (6) seconds, or about eighty-five (85) minutes. Ex. A.

Response: Undisputed.

11. TFATK Episode 726 is an audiovisual work uploaded to YouTube on September 8, 2021. Exhibit B; <https://youtu.be/PGx8vfPE6cc>.

Response: Undisputed.

12. TFATK Episode 726 has an approximate total runtime of one (1) hour, forty-eight (48) minutes, six (6) seconds, or about one hundred eight (108) minutes. Ex. B.

Response: Disputed. According to YouTube, Episode 726 has a runtime of 1:48:05, not 1:48:06. Ex. B.

13. TFATK Episode 729 is an audiovisual work uploaded to YouTube on September 20, 2021. Exhibit C; <https://youtu.be/jnjlNHektdw>.

Response: Undisputed.

14. TFATK Episode 729 has an approximate total runtime of one (1) hour, twenty-one (21) minutes, thirty-four (34) seconds, or about eighty-two (82) minutes. Ex. C.

Response: Disputed. According to YouTube, Episode 729 has a runtime of 1:21:33, not 1:21:34. Ex. C.

15. TFATK Episode 740 is an audiovisual work uploaded to YouTube on October 25, 2021. Exhibit D; https://youtu.be/_kzcXjJuv2A.

Response: Undisputed.

16. TFATK Episode 740 has a total runtime of approximately one (1) hour, thirty-nine (39) minutes, thirty-two (32) seconds, or about one hundred (100) minutes. Ex. D.

Response: Disputed. According to YouTube, Episode 729 has a runtime of 1:39:31, not 1:39:32.

17. The four episodes of TFATK named by Plaintiff have a total combined runtime of just over six (6) hours, fourteen (14) minutes. Exs. A, B, C, D.

Response: Undisputed.

18. “Yew Neek Reaction Video: Schaub Apology” (hereinafter “Reaction Video 1”) is an audiovisual work uploaded to YouTube by Defendant Kyle Swindelles. Exhibit E.

Response: Undisputed that Defendant uploaded the audiovisual work labeled Exhibit E to YouTube. Disputed that Exhibit E is titled “Yew Neek Reaction Video: Schaub Apology.” Defendant has pointed to no evidence establishing that this is the title of Exhibit E.

19. “Reaction Video 1” has a total runtime of approximately nine (9) minutes, forty-one (41) seconds. Ex. E.

Response: Disputed. The Exhibit E file has a duration of 9:50 and the duration that appears on the screen is 9:42, which includes a four-second logo introduction, making the total runtime of the Reaction Video 1 approximately 9:38.

20. “Reaction Video 1” uses a clip from TFATK Episode 725 with a runtime of approximately seven (7) minutes, thirty-two (32) seconds. Exs. A, E.

Response: Undisputed.

21. “Yew Neek Short: Schaub Response” (hereinafter “Short 1”) is an audiovisual work uploaded to YouTube by Defendant Kyle Swindelles. Exhibit F.

Response: Undisputed that Defendant uploaded the audiovisual work labeled Exhibit F to YouTube. Disputed that Exhibit F is titled “Yew Neek Short: Schaub Response.” Defendant has pointed to no evidence establishing that this is the title of Exhibit F.

22. “Short 1” has a total runtime of approximately one (1) minute, fifty-one (51) seconds. Ex. F.

Response: Disputed. Excluding the logo introduction, the length of Short 1 is 1:47.

23. “Short 1” uses a clip from TFATK Episode 726 with a runtime of approximately thirty-nine (39) seconds. Exs. B, F.

Response: Disputed. Short 1 shows Episode 726 (either being played or paused) for 1:38.

24. “Yew Neek Reaction Video: Schaub Trashes Howard Stern” (hereinafter “Reaction Video 2”) is an audiovisual work uploaded to YouTube by Defendant Kyle Swindelles. Exhibit G.

Response: Undisputed that Defendant uploaded the audiovisual work labeled Exhibit G to YouTube. Disputed that Exhibit G is titled “Yew Neek Reaction Video: Schaub Trashes Howard Stern.” Defendant has pointed to no evidence establishing that this is the title of Exhibit G.

25. “Reaction Video 2” has a total runtime of approximately eleven (11) minutes, twenty-five (25) seconds. Ex. G.

Response: Disputed. Exhibit G has a duration of 11:26, not 11:25, which includes a four second logo introduction, making the total runtime of the actual episode approximately 11:22.

26. “Reaction Video 2” uses a clip from TFATK Episode 729 with a runtime of approximately eight (8) minutes, fifty-five (55) seconds. Exs. C, G.

Response: Undisputed.

27. “Yew Neek Short: Reunion” (hereinafter “Short 2”) is an audiovisual work uploaded to YouTube by Defendant Kyle Swindelles. Exhibit H.

Response: Undisputed that Defendant uploaded the audiovisual work labeled Exhibit H to YouTube. Disputed that Exhibit H is titled “Yew Neek Short: Reunion.” Defendant has pointed to no evidence establishing that this is the title of Exhibit H.

28. “Short 2” has a total run time of approximately two (2) minutes, eight (8) seconds. Ex. H.

Response: Disputed. Exhibit H has a duration of 2:08, which includes a four-second logo introduction, making the total runtime of the actual episode approximately 2:04. Ex. H.

29. “Short 2” uses a clip from TFATK Episode 740 with a runtime of approximately fifty-three (53) seconds. Exs. D, H.

Response: Disputed. Short 2 uses Episode 740 (either being played or paused) for the entire length of Short 2.

30. The four Yew Neek videos named by Plaintiff have a total combined runtime of approximately twenty-five (25) minutes, six (6) seconds. Exs. E, F, G, H.

Response: Undisputed.

Respectfully submitted,

DATED: August 2, 2023

/s/ Robert E. Allen
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